

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

COURT-I

Date of hearing: 28.03.2017

Date of pronouncement: 10.04.2017

**A.D. RoM Application No. 50146 of 2017 in
Anti-Dumping Appeal No. 59640 of 2013**

(Arising out of Final order No. 53463/2016 dated 12.09.2016 passed by
CESTAT, New Delhi).

M/s Leather Cloth & Plastics ... Appellants
Manufacturers Association

Vs.

Designated Authority, .. Respondent
Directorate General of Anti-Dumping and
Allied Duties/Ministry of Finance

Appearance:

Shri Pramod Kumar Rai, Advocate for the appellants

Shri Amit Singh, Advocate for the Designated Authority.

Shri Govind Dixit, A.R. for the Revenue

Ms. Reena Khair, Advocate for respondent.

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Misc. Order No. **50167 /2017**

Per B. Ravichandran:

The miscellaneous application for rectification of mistake is filed by the appellant with reference to the Final Order No. 53463/2016 dated 12.09.2016 of the Anti-Dumping Bench of the Tribunal.

2. Brief facts of the case are, that the appellant are an Association of importers and consumers of PVC paste resin in India. They have filed Anti-Dumping Appeal No. 59640 of 2013 against the Final Findings dated 04.04.2013 in Sunset Review investigation by the Designated Authority (the DA), Directorate General of Anti-Dumping & Allied Duties, Ministry of Commerce and Industry and consequent Customs Notification No. 15/2013 dated 03.07.2013 issued by the Ministry of Finance. The issue started in 2004 when the DA recommended, on completion of investigation, imposition of definitive Anti-Dumping duty on the imported PVC paste resin vide his Final Findings dated 28.03.2004. Customs Notification No. 104/2004 dated 07.10.2004 was issued imposing such Anti-Dumping duty as recommended by the DA. After five years, in terms of Anti-Dumping Rules, a Sunset Review of the said duty was carried out by the DA and he recommended the continued imposition of Anti-Dumping duty upto 06.07.2010. The Sunset Review was challenged before the Tribunal. The Tribunal vide final order dated 06.07.2012 set-aside the Sunset Review findings of the DA and the Customs notification issued based on such finding. The matter was remanded to the DA for a fresh decision. The Anti-Dumping duty on the subject goods were allowed to be continued on provisional basis for a period of six months and later extended upto 05.08.2013. The DA re-

examined the issue in the remand proceedings and passed Final findings dated 04.04.2013.

3. This Final Findings of 04.04.2013 and the Customs Notification dated 03.07.2013 were again challenged before the Tribunal by the appellant. The Tribunal passed the final order dated 12.09.2016. The present miscellaneous application is for rectification of error apparent on record in the said final order of the Tribunal.

4. Ld. Counsel for the appellant submitted that the Customs Notification No. 15/2013 was issued in violation of the Tribunal's order dated 06.07.2012. He submitted that the Tribunal directed the DA and the Ministry of Finance for a fresh consideration of the issue with specific reference to classification of the product on which Anti-Dumping duty was sought to be continued. Both the DA and the Customs authorities have not followed the direction in full and issued the Final Findings and the notification with only four digit customs tariff classification. Such classification covers products which were not originally subjected to Anti-Dumping investigation which recommended imposition of Anti-Dumping duty on non plasticised PVC paste falling under Customs Tariff heading 39042110 alone. Whereas in the present impugned custom notification the tariff heading is upto only four digit which apparently will cover more products than that are covered in the original investigation.

5. Ld. Counsel further submitted that there is no causal link between import of the subject goods and the injury to domestic industry. The issue was not examined in proper perspective by the DA. On these two grounds the ld. Counsel for the appellant submitted that the final order of the Tribunal dated

12.09.2016 requires correction. It is submitted that non consideration of grounds agitated by the applicant is an error apparent on record and it should be rectified.

6. Ld. Counsel for the Domestic Industry submitted that the final order of the Tribunal examined the issue in detail and if the appellant is aggrieved by the said order, the only course open to them is to file a statutory appeal against the same. There is no error apparent on record in the said final order. The Tribunal cannot reappraise the evidences or legal arguments, to vary the final order. Such course of action is not permitted within the scope of Section 129B(2) of Customs Act, 1962. Reliance is placed on the decisions of the Hon'ble Supreme Court in the case of *Deva Metal Powders Pvt. Ltd. vs. Commissioner, Trade Tax, U.P. – 2008 (221) ELT 16 (SC) and Commr. of C. Ex. Belapur, Mumbai vs. RDC Concrete (India) P. Ltd. -2011 (270) ELT 625 (SC)*.

7. Ld. Counsel for the DA submitted that the present miscellaneous application is without merit. The final order of the Tribunal is not suffering from any error apparent on record. The legal and factual position have been dealt with in final order and there is no merit in the present miscellaneous application.

8. Ld. AR appearing for the Ministry of Finance, reiterated the arguments already advanced by the ld. Counsels for the Domestic Industry as well as for the DA. He also relied on the above decisions of the Hon'ble Supreme Court to submit that the appellant cannot pray for reappraisal of evidence by way of miscellaneous application. He submitted that there is no error apparent on record in the final order of the Tribunal and the legal relief, if any, required, is by way of statutory appeal only.

9. We have heard all the interested parties extensively and perused the appeal records carefully. The main point of dispute raised in the miscellaneous application is that the final order did not examine non-compliance, of the original remand directions of the Tribunal, by the DA. On carefully perusal of appeal record and the final order dated 12.09.2016 of this Tribunal, we note that the appellant could not bring out any error apparent on record in the said final order. The grievance of the appellant is that the customs tariff classification was restricted to four digit and thereby the scope of Anti-Dumping levy was expanded when compared to the original investigation. These aspects have been examined in detail by the DA and has been taken note of in the final order by the Tribunal. We also note that the Customs Notification dated 03.07.2013 mentions four digit classification and the description of the product, alongwith an Explanation listing out the exclusion of certain products from the purview of Anti-Dumping duty. The observation as recorded in the final order of the Tribunal is as below:

“6. We have heard all the interested parties. We have also perused the appeal records including written submissions. We note that in the remand decision by the Tribunal on the appeal filed by the same appellant, the scope of AD levy on the subject goods was examined in detail. It was noted that the Customs Notification mentioned the product by name as well as eight digit classification code. The Tribunal observed that since both are relevant, for any change in the subsequent proceedings by the DA or in the Customs Notification, the same has to be made as per the Rules and procedure laid-down. The Tribunal held that the Central Government had no power to impose AD duty on PVC paste resin falling under a different classification. The amending notification in 2012 when the appeal against 2010 notification was pending before the Tribunal without any recommendation from the DA cannot be legally sustained. Thus, it was concluded that when the notification mentions and identifies the subject goods by name and specific tariff classification, any change in such parameters ought to be done within the ambit of law. We note that the whole dispute arose and become subject matter of appeal before the Tribunal on the contention of eight digit classification and inconsistency in identifying the subject goods with reference to such classification. However, we note that in the present impugned findings as well as the

consequent Customs Notification dated 03.07.2013 the subject goods have been identified by name as well as by classification heading upto four digit only. In other words, heading 3904 Poly Vinyl Chloride Paste Resin have been subjected to AD duty as per the rates specified therein. Admittedly, the present findings and the Customs Notification has no room for ambiguity. We find the matter relating to eight digit classification and the inconsistency emanating thereafter is no more a point of dispute or relevant in the present appeal proceedings. We take note that the Tribunal remanded the matter to the DA for a fresh consideration and the appellants have been given liberty to raise all the issues before the DA. Upon such direction and complying the same, the present findings were issued, as such we find no merit in the appeal on this issue.

7. Regarding the findings of the DA on injury margin and quantification of AD duty we have carefully perused the impugned findings and there is nothing in the present appeal specific to any issue to persuade us to interfere with the same. Regarding causal link, the DA has examined and recorded his finding from para 123 to 131. It has been clearly recorded that the import of subject goods increased significantly and in direct consequence thereof the domestic industry lost market share. The DI lost sales volume and there is undercutting of prices. The DI was prevented from increasing the prices in line with increase in cost of production due to availability of low priced dumped import goods. It was concluded that the deterioration in profits, return on capital are apparently as a result of dumped imports. After analysing various parameters, the DA concluded on recommending the levy of AD duty which was notified through the impugned Customs Notification.

10. We note that both the issues now raised in the miscellaneous application, have been dealt with in the above findings and there is no error apparent on record by way of non-consideration of any issue raised by the appellant. Here, it is relevant to note that by the present miscellaneous application, the appellant is seeking virtually a review of the final order of the Tribunal. The Hon'ble Supreme Court in **RDC Concrete (India) P. Ltd.**(supra), while examining the powers of the Tribunal on RoM application, held as below:

*“21. This Court has decided in several cases that a mistake apparent on record must be an obvious and patent mistake and the mistake should not be such which can be established by a long drawn process of reasoning. In the case of **T.S. Balram Vs. M/s.Volkart Brothers** (supra), this Court has already decided that power to rectify a mistake should be exercised when the mistake is a patent one and should be quite obvious. As stated*

*hereinabove, the mistake cannot be such which can be ascertained by a long drawn process of reasoning. Similarly, this Court has decided in **ITO vs. Ashok Textiles**, 41 ITR 732 that while rectifying a mistake, an erroneous view of the law or a debatable point cannot be decided. Moreover, incorrect application of law can also not be corrected.”*

11. Having considered the submissions in the miscellaneous application, the Final order and the appeal records we find that the present miscellaneous application is devoid of merit and the same is dismissed.

(Pronounced on **10.04.2017**)

(Justice Dr. Satish Chandra)
President

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant